United States Court of Appeals

for the Second Circuit

REPLY BRIEF

75-2058

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel. ROY SCHUSTER, Petitioner, -against- LEON J. VINCENT, Respondent.	Docket No. 75-2058

REPLY BRIEF

Roy Schuster, Petitioner
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In The United States Court Of Appeals
For The Second Circuit Of New York

U.S. ex rel. Roy Schuster, Petitioner v. Leon J. Vincent, Respondent.	75-2058 Traverse

State Of New York)
: ss.
County Of Dutchess)

Roy Schuster, the above-named petitioner, is the relator herein and in hereby traversing the State's return to this Court dated June 3, 1975, in above entitled action,

1. Relator reiterates each and every allegement and contention contained in his brief, dated May 6, 1975, currently before this Court.

2. Relator denies that the allegements and arguments contained in said return have either merit or probative value, in that they rest on either irrelevant matters or on issues long conceded in relator's favor by virtue of the State's repeated evasion of them when raised by relator.

3. Relator, anent ¶2 directly above, respectfully refers the Court to his said brief and to the brief and traverse submitted to the Court below.

4. Relator, specifically, calls the Court's attention to the nature of the allegements and arguments contained in said return [page numbers refer to said return]:

Page 2

The State alleges: "In 1931, Schuster killed both his wife and her attorney."

The falseness of this statement is evident in the fact that relator was tried only for the killing of his wife ; the trial record in the matter shows that he did not (and was not charge with) killing said attorney.

Page 4

The State alleges that this Court "ordered the State to either grant [relator] a new hearing.....or return him to a prison facility."

The said order, however, commanded not a "hearing" but rather a full-scale jury trial proceeding (with the issues relator raises). [The use of the word "hearing" appeared deliberately to imply a parole board hearing.]

Rather than hazard an open-court confrontation with relator in said jury trial, the State suddenly discovered that relator was not mentally ill and thereupon transferred him "from the hospital [Dannemora State Hospital] to the Green Haven Correctional Facility -- despite its allegement shortly previous thereto that relator was, and always had been, incurably insane.

Page 5

The State quotes relator as having said to the Parole Board: "I would regard even an offer of parole, as a gratuitous insult."

Had relator accepted parole (in the absence of the rulings prayed for in his brief currently before this Court), he thereby would have made himself an accessory after the fact of the illegal and corruptly motivated acts involved in the "poisonous tree" suppression of his 1941 Clinton Prison deposition, and in the "fruit" thereof -- by thus aiding and abetting in the concealment of said acts.

The attempts of the Chairman of the parole board panel to persuade relator to accept parole tends to indicate, once again, the Parole Board's continued determination -- initiated in 1948 -- to lend its vested powers, in cooperation with the

Department of Correction, to the end of perpetuating the concealment of said illegal and corruptly motivated acts.

Page 10

Anent the extract from Schuster v. Vincent 42 AD 2d 597, relator respectfully points out that, in his brief currently before this Court, he cited a number of such "requirements" violated deliberately by the Parole Board, thus making said citation operate in favor of relator.

Page 11

Here the State's version of the "release agreement" was considerably less than accurate. As explained to relator by the Court, it would stipulate: no parole reports; no parole officer to come near relator; relator could leave the State or Country any time he so desired; and he could not be returned to prison except upon conviction of a new crime -- in short, a "release agreement" calculated to induce relator to connive in the concealment of aforesaid illegal and corruptly motivated activities dedicated to boosting the rate of recidivism.

Page 14

Here the alleged concern of the State for relator's

welfare would be less susceptible to suspicion of ulterior motives, if it had not illegally and corruptly retained relator 27 years beyond merited date of parole, and had offered him reasonable "gate money" for re-entry into society (say, $10,000) instead of the current pittance of $40.00. With the former amount, relator could successfully re-establish himself as a credit to his community and country -- without need of any assistance from social welfare funds, etc.

Anent the alleged need of supervision. The evidence in this case is such that any alert mind might well consider it more appropriate for relator to superintend the conduct of the Board and the Division of Parole, while they are "beyond prison walls." Certainly the facts establish that his morals and integrity are less susceptible to erosion than theirs.

Page 15

Relator does not want -- and would not accept -- any "friend" who believes he is serving his "master.... -- society at large", by demanding that relator join him in thumbing a nose at the laws of this land. Nor, by the widest construction, does Morrissey v. Brewer 408 U.S. 471, 477-488 (1972) suggest that relator must accept such a "friend" -- or colleagues thereof.

Pages 17-18

Acceptance of parole, or of anything from the Parole Board (in relator's case), would be tantamount to embracing the morals of the Parole Board -- which, as the evidence in this case cogently indicates, do not conform with the laws of this country. Relator feels that, under the circumstances, he merits discharge by the Court, not by the Parole Board -- and on strength of the warranted rulings prayed for in his brief currently before this Court.

Relator's position -- contrary to the State's misstatement of it -- was, and is, that the 1948 denial of parole was illegally accomplished and corruptly motivated, argument in support of which is contained in relator's aforesaid brief currently before this Court. This instance of inexcusable perversion of position is consistent with the tactics of throwing dust in the eyes of the Court employed by the State throughout its instant return -- and throughout all its papers in this matter, presumably with the hope of blocking the attention of the Court from the "cruel and unusual punishment" to which relator has been subjected by the "poisonous tree" and "fruit" thereof.

Page 19

Relator did not assume (as alleged) that he was

"automatically entitled to release, on his earliest possible release date." He contended that, in 1948, he was entitled to a parole board hearing calculated to determine fitness for parole -- which the Parole Board arbitrarily, illegally, and corruptly denied him; and that therefore the Board then-and-there became incompetent to exercise jurisdiction of him, fulfilling, thereby, the requirements for loss of said jurisdiction. Schuster v. Vincent 42 AD 2d 597.

By virtue of the evidence in the matter (set forth in aforementioned brief currently before this Court), the probability is overwhelming that the Board did not entertain the assumption alleged anent insanity. In any event, such an assumption did not Constitutionally excuse, extenuate, or, in any way, mitigate deprivation of the type of parole hearing mandated by law, due process, and equal protection of the law. Therefore, all arguments resting on said assumption cannot Constitutionally have any probative value.

Pages 12-13

The State asserts: "Because of the peculiar factual nature of his case, petitioner's claim that he is entitled to unencumbered release from prison might at first glance appear to have an aura of validity. However, we respectfully contend

that once the claim is divorced from its emotional pitch and tested in the light of pertinent facts and in light of relevant case law, it becomes clear that it is without merit."

Relator's claim, here alluded to, was, and is, that he is entitled to absolute discharge by the Court (not by the Parole Board) and on ground of the warranted rulings prayed for in his brief currently before this Court; and he would like nothing better than to have said claim tested in the light of fact and law.

It would not be unnatural, in this connection, for this Court to grant said rulings, on ground that, in addition to consistently evading the issues derived from the "poisonous tree" suppression of his 1941 Clinton Prison deposition, and from the "fruit" thereof, the State has failed utterly to cite statutory or case law tending

a) to sanction suppression of relator's said deposition directed to a court of law;

b) to sanction institution of a lunacy proceeding for the purpose of accomplishing the suppression of said deposition;

c) to sanction said lunacy proceeding conducted in

deliberate violation of rights and privileges guaranteed to every citizen by the Constitution and federal statutes;

d) to sanction employment of such a lunacy proceeding to accomplish transfer of relator to Dannemora State Hospital (a madhouse), and thereby suppression of said deposition;

e) to sanction retention of relator for 31 years among the insane in said hospital, completely incommunicado for the first three years and intermittently thereafter in all matters of a legal nature, in order to prevent timely appeal of said lunacy proceeding;

f) to sanction parole board collusion with prison and madhouse officials, by means of illegally and corruptly denying relator parole in 1948 and absolute discharge in 1953;

g) to sanction the illegal and corruptly motivated detention of relator 27 years beyond date of rightful release on parole and 22 years beyond date of rightful absolute discharge from servitude; and

h) to sanction State and Parole Board jurisdiction of relator beyond the date the State and said Board, by means of illegal and corruptly motivated treatment, demonstrated incompetency to exercise such jurisdiction.

COURTS CANNOT ALLOW THE STATE AND THE PAROLE BOARD TO CRIMINALLY FLOUT RIGHTS AND PRIVILEGES GUARANTEED BY THE CONSTITUTION AND FEDERAL LAWS, WITHOUT ENCOURAGING THE GROWTH OF EVIL.

Conclusion

Wherefore, relator reiterates his prayer for the warranted rulings cited in his brief currently before this Court; and, also, for absolute discharge by the Court, on ground of said rulings.

Dated: Stormville, New York
June 12, 1975

Respectfully submitted,

Roy Schuster

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State Of New York)
: ss.
County Of Dutchess)

Subscribed and sworn to before me
this 12 day of June, 1975.

Esmond W. Gifford

Notary Public

ESMOND W. GIFFORD, SR.
Notary Public, State of New York
Dutchess County
Commission Expires March 30, 1977

CERTIFICATE OF SERVICE

June 16, 1975

I certify that a copy of this reply brief, prepared by the petitioner pro se, has been mailed to the Attorney General of the State of New York.